4616

AN ANSWER TO THE Scotch Papers.

Adams 7.64.47

Delivered

In the Houſe of Commons

in Reply to the Votes of both Houſes of the PARLIAMENT of England,

Concerning the diſpoſall of the

Kings Perſon,

As it was ſpoken when the ſaid Papers were read in the Houſe.

By *Thomas Chaloner* Eſquire, A Member of the Houſe of Commons.

London, Printed by *Francis Leach*, 1646.

ANSWER

TO THE

Scotch Papers.

~~96,281~~

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A Speech made in the House of Commons the 26th day of *October* 1646. (upon the Reading of the Scotish Papers the same day,) In Reply to the Votes of both Houses of Parliament of the 24th. of Sept. concerning the disposall of the Kings Person, (spoken by *Thomas Chaloner*, Esquier, a Member of the said House.

Mr. SPEAKER,

YOu have just now heard two Papers Read before you from the Commissioners of *Scotland*, the first concerning the disposall of the Kings Person, the other touching the distractions of the North, by reason (as they say) of the non-payments of their Army: I shall speak nothing to the

 latter

latter, because it hath beene so sufficiently answered by divers knowing Members of this House. To the first I shall wholly apply my selfe, because little or nothing hath beene said to that point.

The question then before you is, about the disposeall of the Kings person, you say that, hee is to be disposed of as both Houses of Parliament shall think fitting, but your Brethren of *Scotland* say hee is to be disposed of as both Kingdomes shall think fitting, And they Fortifie their affirmation with these reasons.

They say that he is not only King of *England*, but also King of *Scotland*, and as you have an interest in him, hee being King of *England*, so have they no lesse interest in him hee being KING of *Scotland*. And as they have not the sole interest in him, hee being KING of Scotland, because they acknowledge with all, that hee is King of *England*, so have not you the sole interest in him, he being King of *England*, because they desire you to remember, that he is also King of *Scotland*, so as neither Nation having a sole, but a joynt Interest in his person, they ought joyntly to dispose of it for the weale and benefit of both Kingdomes.

This I take to bee the whole scope of their Argument which they have represented unto you under so many disguises, and as it were by multiplying

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ing glasses, Insomuch as the bare relating of it takes up three large sheets of paper.

But while they debate this great question with you, touching the disposall of the Kings Person, and while they positively affirme, that he is to be disposed of by the joynt consent of both Nations. Give me leave to remember you that in the meane time, they dispose wholly of him themselves, and so have done for these six months, and may for six months longer, for any thing I can gather out of these Papers.

Their Argument runs thus.

Wheresoever the Kingdome of Scotland *hath an Interest in there King, there they may dispose of him.*
But the Kingdome of Scotland *hath an Interest in their King, he being in England.*
Therefore in England *they may dispose of him.*

Sir, This may seeme at the first to some to be a faire and specious Argument, but let it be well considered, it will prove erronious and Fallacious. For in the Major Proposition they understand one thing by the word King, and in the minor Proposition they understand another thing by the word King, and so here is a conclusion inferred,

which the premiſſes will not warrant.

For the cleering whereof, I pray Sir, remember that this word King is of a various ſignification, ſometimes it is taken in *abſtracto*, that is for the Royall power, Function, and office of a King, ſometimes it is taken in *Concreto*, that is for the man or perſon whom we call King.

If their Major Propoſition be taken in the firſt ſenſe, we ſhall never deny it them, nay wee ſhall acknowledge that the King of *Scotland* being taken in *abſtracto*, wee have nothing to doe with him at all, ſiee is ſolely and totally theirs; God forbid that a King of *Scotland* going out of his Kingdome ſhould either make *Scotland* ceaſe to bee a Kingdome, or give any participation of intereſt to that Countrey where hee doth reſide, Let his perſon reſide in the furtheſt parts of the earth; yet the Royall Office and Capacity of the King reſideth ſtill in *Scotland*, They have his ſword to do Iuſtice by, they have his Scepter to ſhew mercy by, they have his Seale to confirme what they pleaſe by: And they have his Lawes to Governe by; And in this ſenſe it is only meant that the King is never under yeares, never dyes, cannot bee deceived, can neither do wrong, nor take wrong, of any body; And in this ſenſe we fight for King and Parliament, though the perſon of the King bee in oppoſition to both, and in this ſenſe the returnes and teſts of the Kings Writs are, *Coram me ipſo apud Weſtmonaſterium*, and *teſte me-*

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ipso apud Westmonasterium, let the Person of the King at the same time be in *France*, or the remotest Country of the world; but a *King* of *Scotland* taken in this sense is never out of *Scotland*, and therefore whereas they say in the minor Proposition. That the Kingdome of *Scotland*, hath an interest in their King, he being in *England*, this must needs be meant of a King in *Concreto*, that is onely of the person of their King, and not of his Royall Capacity. And in this sense we must deny that they have any thing at all to doe with him. For though the Royall Office of the King of *Scotland* is solely to bee disposed of by the State of *Scotland*: Yet it is not so with his Person. For *Persona sequitur locum*; and his person must be disposed of by the supreame power of that Country wheresoever he shall happen to abide. Suppose a King of *Scotland* should bee in *Spaine*, will they say, they have as great an interest to dispose of his Person there as in *Scotland*, I thinke they will not say so: and yet they did affirme last day at the Conference, that they had as good right to dispose of his person at Westminster, as they had at *Edenburgh*. But under their favour *England* is as distinct a Kingdome from *Scotland* as *Spaine*: It is as distinct in Lawes, distinct in Priviledges, distinct in interest, it is neither subordinate, nor dependent of *Scotland*, and they can no more dispose of a King of *Scotlands* person, he being in *England*, then if he were in *Spaine*.

I shall take this as granted for good Law, that let the person of any Nation under the sun, which is in amity with *England*, happen to come into *England*, that person is forthwith a subject of *ENGLAND*

For hee being protected by the Lawes of *England*, hee becomes thereby subject to those Lawes, it being most certaine that *Protectio trahit subjectionem, & subjectio protectionem*, they being relatives, the one cannot stand without the other, and as no man can be said to be a father that hath no son, nor no man a husband, that hath no wife, so no man can bee said to bee protected, that is not withall thereby subjected. And since without such protection every man may kill him, and destroy him. It seemes to stand with no proportion of Justice, that a man should bee protected in Life, Limbe, or estate by any law that will not subject himselfe to that Law.

It cannot bee denyed, but that there is a twofold subjection legall, and locall, the legall subjection is due from every subject to his naturall Prince, the locall from any Forreigner to that Prince or State where his person doth reside. And this, though it be onely *pro tempore*, and the other, during life: Yet it doth for the time totally obstruct the operation of the other subjection: So that

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no King can command any ſubject of his, living out of his Kingdome, but ſuch ſubject of his, is to bee diſpoſed of, by the ſole Authority of that ſupreame power, where hee makes his Reſidence: And ſince the queſtion is onely about the perſon of a King of *Scotland*, for I conceive they will not take upon them any Authority to diſpoſe of the Perſon of a King of *England*, I doe affirme that if a King of *Scotland* ſhould have come into ENGLAND, before the Union of both theſe Kingdomes, hee had beene inſtantly a ſubject of England and his perſon to bee diſpoſed of by the ſole Authority of the Lawes of England.

For either wee muſt take him as a King or a Subject, ſince betwixt them two there is no medium, as a King wee cannot take him, unleſſe wee ſhould commit Treaſon againſt our naturall Prince, and ſubject our ſelves to any but to him, it being moſt certaine, that there is the ſame relation betwixt the King and his Subjects, as betwixt the husband

husband and his wife, and as no man can be ſaid to be a husband but to his own Wife; So no man can be ſaid to be a King but to his owvne ſubjects, and therefore we cannot admit of any Regality in the perſon of a King of *Scotland* comming into *England*, unleſſe at the ſame time, to the ſame perſon we ſhould confeſſe ſubjection. For that it is moſt true, that as none can be ſaid to be *Rex ſine Regno*, ſo no man can be ſaid to bee *Rex* but in *Regno*: Therefore if a King of *Scotland* comming as afore ſaid into *England*, if againſt the Lawes of England hee doe offend, by thoſe Laws of *England* he muſt be tryed, and by none other, For *ubi quis delinquit, ibi punietur*, And it is moſt ſure, that we have diſpoſed of the perſons of Kings of *Scotland* comming into *England* both living and dead. And if wee may diſpoſe of the perſon of a King of *Scotland* without the conſent of the Kingdome of SCOTLAND, much more may wee diſpoſe of the perſon of a King of ENGLAND, hee being now

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in England without their privity or advice. But if they have any power to diſpoſe of him, it is becauſe they are either our Maſters or our Fellows: if they be our Maſters, let them ſhew the time when they conquerd us, or the price for which we were ſold unto them: If they be our Fellows, why come they not to our Parliaments, why contribute they not to our neceſſities? But as it is apparent that they being two diſtinct Kingdomes, governed by two diſtinct Lawes: ſo they ought not to intermeddle one with anothers intereſt; but to content themſelves with what doth naturally appertaine to each of them ſeverally.

There is no doubt to be made, but that every Husband hath as great an intereſt in the perſon of his wife, as any Subject hath in the perſon of his Soveraigne; and yet a man may loſe that intereſt by ſome act of his Wives, as if ſhe commit Felony, Murder, or Treaſon, the Law diſpoſeth of her perſon, and her husband cannot claime any right, ſo much as to her dead body: ſo fareth it with a King, who by going out of his Kingdome, or by being taken priſoner by his enemies, his Subjects loſe the intereſt they had in him, and he is at the diſpoſall of his enemies *Jure belli*. *John* King of England was cited to appeare at Paris to anſwer for the death of *Arthur Plantagenet* Duke of Britaine whom hee had murthered; the State of England would not let him goe, as holding it a great indignity and incongruity that a King of England ſhould anſwer for

any thing at Paris right or wrong; The French answered that they cited him not as King of England, but as Duke of Normandy; as King of England they acknowledged to have nothing to doe with him, he was in that respect without them and beyond them; but as Duke of Normandy which he held in fee of the Crown of France, he owed fealty and allegiance for the same to the Crowne of France, and therefore ought to answer. The English replied, that if the Duke of Normandy did goe, the King of England must goe; and if the Duke of Normandy were beheaded, they knew well enough what would become of the King of England; Upon large debate hereof by all the Lawyers in France it was resolved that if *John* had been in Normandy at the time of his summons, he ought to have appeared; but he being *Extra jurisdictionem Regni Franciæ* at the time of his summons, and *infra jurisdictionem Regni Angliæ*, though legally he were a subject of France, yet locally he being in England, his summons was voyd, and hee forfeited nothing by his non-appearance.

I will onely urge one argument more deduced from a knowne maxime of the Law, not of England but of Scotland also, which the Commissioners of Scotland the other day at the Conference did cite themselves, in my opinion much against themselves, and that is this, *Quando Duo Jura, imò Duo Regna* (saith a great Lawyer) *con-*

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currant in una perſona, æquum eſt ac ſi eſſent in diverſis, which is no more then this, when two kingdomes held by two diſtinct Titles doe concur in one and the ſame perſon, it is all one as if they were in two diſtinct perſons. I ſuppoſe here is our very caſe, here are two kingdomes, England and Scotland, held by two diſtinct Titles, which doe both concur in one Perſon, in the perſon of King CHARLES; it is all one ſayth this rule and maxime of the Law, as if they were under two ſeverall perſons; why then put the caſe, that there were one King of England and another of Scotland, ſhould the State of Scotland have any thing to doe to diſpoſe of the perſon of a King of England, he being in England? I thinke you will ſay they could not.

Sir, I am ſorry that our brethren have moved this queſtion at this time; for all queſtions make debates, and debates differences; and this were a time for brothers to reconcile differences rather then to make them; we have now lived 44 yeeres both under two Princes, and in all this time this queſtion was never ſtirred in till now; had it been ſtirred in, no queſtion but it had been rejected. The people of England would have held it very ſtrange that they could not have diſpoſed of the perſon of their owne King, or that a King of England could not have gone from Whitehall to Richmond or Hampton-court with-

out the will and appointment of the Councell of Scotland: they would have thought they had made an evill bargaine by such a union. For before the union they might have disposed of the person of their Prince; but after, not. And since they conceived that by the addition of Scotland there was an addition of charge, they would have been very sorry withall to have had an addition of servility.

Since the beginning of the World there was never before such a contention about the person of a King. The Greekes and Trojans did contend for a long time in fight about the dead body of *Patroclus* which of them should have it. But here is not a contention about the dead body of a private man, but about the living body of a King; neither doe we contend as they did, who should have his person, but here you do contend (as farre as I conceive) who should not have it. Your brethren of Scotland say positively they will not have the Kings person upon any conditions whatsoever. It is now above six moneths past that you voted in this House the demanding of the Kings person, but the Lords refused to joyne with ye; ever since untill this present you your selfe did Acquiesce as if you had repented of your former vote; Now he must be put upon you, and with such termes as his present Gardians please to allow of.

Truly

Truly it ſeemes ſtrange to me, that an Army of Scots in pay of the kingdome of England, which by the Treaty ought to be governed by the joynt conſent of the Committees of both kingdomes upon the place, ſhould in England take a King of England without the privity of the Engliſh Committee, and convey him to Newcaſtle a Towne likewiſe of England, and ſhould there keepe him for ſix whole moneths without the conſent of both Houſes of Parliament. And when they finde it not convenient for them to keepe him any longer, then they will capitulate with you upon what conditions you muſt receive his perſon.

I never thought to have found a King of England his perſon being in England, under any other protection but that of the Lawes of England; but now I finde him under the protection of a Scottiſh Army, whether they ſay hee is fled for ſhelter, and that they cannot render him up in Honour.

Sir, if that Army of theirs be come into this kingdome as brethren, friends, and confederates (as we hope they are) then is every perſon of that Army during the time of his ſtay here locally a ſubject of England, and ſuch children as are borne to them here are not Aliens but Deniſons, and not onely locall but legall Subjects of this kingdome. And therefore they having gotten the

the King into their hands, they ought no more to capitulate upon what terms he should be delivered into yours; then if the Army of Sir *Thomas Fairfax* were in possession thereof, who if they should deny the surrendring of the King unto you, but upon condition, no question but it were capitall.

They say, that by vertue of the Covenant they are obliged to defend his Person and Authority. What his Authority is in Scotland themselves best know; but you onely are to judge of it in England, since being not subordinate to any power on Earth, there is no power under Heaven can judge you. The Covenant ties you to maintaine in the first place the Rights of Parliament, and the liberties of the Kingdome; and in the second place the Kings Person and Authority; and that onely in defence of the former, and not otherwise. And whereas they expect the King should be received by you with Honour, safety, and freedome, I beseech you, Sir, consider whether (as the case now stands) his Reception with Honour can stand with the Honour of the Kingdome, whether his safety be not incompatible with the safety of the Commonwealth, and whether his freedome be not inconsistent with the freedome of the people.

I pray (Sir) take heed least that bringing him in with Honour you doe not dishonour your selfe,

ſelfe, and queſtion the very juſtice of all your Actions; be wary that in receiving him with ſafety you doe not thereby endanger and hazard the Common-wealth; be adviſed leaſt in bringing him home with freedome, you doe not thereby lead the people of England in thraldome.

I pray (Sir) firſt ſettle the honour, ſafety and freedome of the Common-wealth, and then the honour, ſafety, and freedome of the King, ſo far as the latter may ſtand with the former, and not otherwiſe

Wherefore I ſhall conclude with my humble deſire that you would adhere to your former vote that is, that the King be diſpoſed of as both Houſes of Parliament ſhall thinke fitting; and that you enter into no Treaty either with the King or your brethren of Scotland, leaſt otherwiſe thereby you retard the going home of their Army out of England.

FINIS.